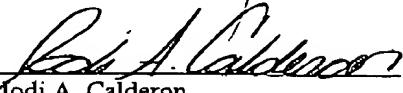


Rec'd PCT/PTO 03 JUN 2004

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent Office on the date indicated below.

Attention: PCT Legal Administrator

Facsimile: 703-308-6459
Total Pages: 27

 Jodi A. Calderon

Date: June 3, 2004

09/937331

09/937331

DAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/937,331 Examiner: (not yet assigned)

Filing Date: September 21, 2001 Group Art Unit: 1723

Inventor: Kunze Attorney Docket No. 72.053

Assignee: Wacker Construction Equipment AG

Invention: *Internal Vibrator with a Measuring System*

PETITION UNDER 37 CFR §1.181(a)(3) TO INVOKE
THE COMMISSIONER'S SUPERVISORY AUTHORITY

Mail Stop PCT
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

Attention: PCT Legal Administrator

Sir:

RECEIVED

03 JUN 2004

Legal Staff
International DivisionSTATEMENT OF FACTS

Petitioner filed a Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b) (Form PTO/SB/64/PCT) and accompanying documents on December 11, 2001. A copy of said Petition is attached as Appendix A. A self-addressed stamped postcard receipt, accompanying said Petition, was received by the PCT Branch of the USPTO on February 4, 2002 (see Appendix B).

On April 12, 2002, Petitioner received a Notice of Cancellation of Assigned Serial Number, dated April 5, 2002, indicating that parallel Serial No. 10/049,135 was being cancelled. The

(00060967.DOC /)

BEST AVAILABLE COPY

U.S. Serial No. 09/937,331 to Kunze
Art Unit: 1723
Page 2

Notice also indicated that any fees associated with Serial No. 10/049,125 had been credited to Petitioner's Deposit Account No. 50-1170. See Appendix C. After failing to receive any additional communication regarding this application, Petitioner filed first, second, and third status inquiry letters on May 21, 2003, September 15, 2003, and March 8, 2004, respectively. See Appendix D. No response has been received. During a telephone conversation with the PCT Help Desk on or about May 27, 2004, Petitioner learned that no action has yet been taken on the petition filed December 11, 2001. Petitioner additionally learned that, contrary to the indication set forth in the Notice of April 5, 2002, fees associated with 10/049,135 apparently are still indicated as being credited towards that now cancelled serial number.

Nearly thirty (30) months have now passed since the filing of the Petition on December 11, 2001 petition.

POINTS TO BE REVIEWED AND ACTIONS REQUESTED

In light of the foregoing, Petitioner hereby petitions to invoke the Commissioner's supervisory authority to take the following actions at the earliest possible date:

1. Consideration and grant of the Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b), filed December 11, 2001;
2. Crediting any fees associated with Serial No. 10/049,135 that were not previously so credited to Petitioner's Deposit Account No. 50-1170; and

U.S. Serial No. 09/937,331 to Kunze
Art Unit: 1723
Page 3

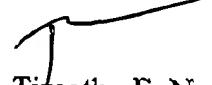
3. Forwarding of this communication to the appropriate Examination Group for further action.

CONCLUSIONS

No fee is believed to be payable with this communication. Nevertheless, should the Commissioner consider any other fees to be payable in conjunction with this or any future communication, the Commissioner is authorized to direct payment of such fees, or credit any overpayment to Deposit Account No. 50-1170.

The Examiner is invited to contact the undersigned by telephone if it would help expedite matters.

Respectfully submitted,


Timothy E. Newholm
Registration No. 34,400

Dated: June 3, 2004

Customer Account No. 23598

BOYLE FREDRICKSON NEWHOLM
STEIN & GRATZ S.C.
250 East Wisconsin Avenue
Milwaukee, WI 53202
Telephone: (414) 225-9755
Facsimile: (414) 225-9753

APPENDIX A

Petition for Revival of an International Application for Patent Designating the U.S.
Abandoned Unintentionally Under 37 CFR 1.137(b) (Form PTO/SB/64/PCT) and
accompanying documents filed on December 11, 2001

PTO/SB/64/PCT (10-00)

Approved for use through 12/31/2002, OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT
DESIGNATING THE U.S. ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137 (b)**

Docket Number (Optional)
72.053

First named inventor:

International (PCT) Application No.: PCT/EPOO/02138

US Application No.: 09/937,331
(If known)

Filed: September 21, 2001

Title: *Internal Vibrator with a Measuring System*

Attention: PCT Legal Staff

Box PCT

Assistant Commissioner for Patents

Washington, D.C. 20231

The above-identified application became abandoned as to the United States because the fees and documents required by 35 U.S.C. 371(c) were not filed prior to the expiration of the time set in 37 CFR 1.494(b) or (c) or 1.495(b) or (c) (as applicable). The date of abandonment is the day after the date on which the 35 U.S.C. 371(c) requirements were due. See 37 CFR 1.494(g) or 1.495(h).

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee
- (2) Proper reply
- (3) Terminal disclaimer with disclaimer fee — required for all international applications having an international filing date before June 8, 1995; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

Small entity – fee _____ (37 CFR 1.17(m)). Applicant claims small entity status.
See 37 CFR 1.27.

Other than small entity - fee \$1,280.00 (37 CFR 1.17(m))

2. Proper reply

A. The proper reply (the missing 35 U.S.C. 371(c) requirements) in the form of payment of U.S. Basic National Fee in the amount of \$1,060 (identify type of reply):

has been filed previously on _____.

is enclosed herewith.

[Page 1 of 2]

Burden Hour Statement: This form is estimated to take 1.0 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231

3. Terminal disclaimer with disclaimer fee

Since this international application has an international filing date on or after June 8, 1995, no terminal disclaimer is required.

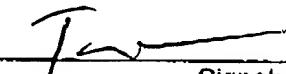
A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. Statement. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

12/12/10

Date



Signature

Timothy E. Newholm

Typed or printed name

250 East Wisconsin Avenue, Suite 1030

Address

Milwaukee, WI 53202

Enclosures:

Response

TOTAL Fee Payment = \$2510, including Petition fee (\$1,280), U.S. Basic National Fee (\$1,060); surcharge late filing of Declaration (\$130); Assignment recordation fee (\$40).

Terminal Disclaimer Form

OTHER: Fee Transmittal; Transmittal Letter to US Designated/Elected Office; executed Declaration; Assignment with Recordation Coversheet; Appointment of Domestic Appointment of Domestic Representative

Under the Paperwork Reduction Act of 1995, persons are required to respond to a collection of information if the form displays a valid OMB control number.

FEE TRANSMITTAL for FY 2001

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT (\$2,510)

| Complete if Known | |
|----------------------|--------------------|
| Application Number | 09/937,331 |
| Filing Date | September 21, 2001 |
| First Named Inventor | Kunze |
| Examiner Name | |
| Group Art Unit | |
| Attorney Docket No. | 72.053 |

METHOD OF PAYMENT

1. The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

| | |
|--|---|
| Deposit Account Number | 50-1170 |
| Deposit Account Name | Boyle, Fredrickson, Newholm, Stein & Gratz S.C. |
| <input checked="" type="checkbox"/> Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17 Applicant claims small entity status. See 37 CFR 1.27 | |

2. Payment Enclosed:

Check Credit Card Money Order Other

FEE CALCULATION

1. BASIC FILING FEE

| Large Entity Fee Code (\$) | Small Entity Fee Code (\$) | Fee Description | Fee Paid |
|----------------------------|----------------------------|-----------------|---------------------------|
| 101 | 740 | 201 | 370 Utility filing fee |
| 106 | 330 | 206 | 165 Design filing fee |
| 107 | 510 | 207 | 255 Plant filing fee |
| 108 | 740 | 208 | 370 Reissue filing fee |
| 114 | 160 | 214 | 80 Provisional filing fee |

SUBTOTAL (1) (\$)

2. EXTRA CLAIM FEES

| Total Claims | Independent Claims | Multiple Dependent | Extra Claims | Fee from below | Fee Paid |
|--------------|--------------------|--------------------|--------------|----------------|----------|
| | | | -20**= | X | |
| | | | -3**= | X | |

| Large Entity Fee Code (\$) | Small Entity Fee Code (\$) | Fee Description |
|----------------------------|----------------------------|---|
| 103 | 18 | 203 9 Claims in excess of 20 |
| 102 | 84 | 202 42 Independent claims in excess of 3 |
| 104 | 280 | 204 140 Multiple dependent claim, if not paid |
| 109 | 84 | 209 42 **Reissue independent claims over original patent |
| 110 | 18 | 210 9 **Reissue claims in excess of 20 and over original patent |

SUBTOTAL (2) (\$)

** or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

| Large Entity Fee Code (\$) | Small Entity Fee Code (\$) | Fee Description | Fee Paid |
|------------------------------------|----------------------------|---|-----------|
| 105 | 130 | 205 65 Surcharge - late filing fee or oath | 130 |
| 127 | 50 | 227 25 Surcharge - late provisional filing fee or cover sheet | |
| 139 | 130 | 139 130 Non-English specification | |
| 147 | 2,520 | 147 2,520 For filing a request for ex parte reexamination | |
| 112 | 920* | 112 920* Requesting publication of SIR prior to Examiner action | |
| 113 | 1,840* | 113 1,840* Requesting publication of SIR after Examiner action | |
| 115 | 110 | 215 55 Extension for reply within first month | |
| 116 | 400 | 216 200 Extension for reply within second month | |
| 117 | 920 | 217 460 Extension for reply within third month | |
| 118 | 1,440 | 218 720 Extension for reply within fourth month | |
| 128 | 1,960 | 228 980 Extension for reply within fifth month | |
| 119 | 320 | 219 160 Notice of Appeal | |
| 120 | 320 | 220 160 Filing a brief in support of an appeal | |
| 121 | 280 | 221 140 Request for oral hearing | |
| 138 | 1,510 | 138 1,510 Petition to institute a public use proceeding | |
| 140 | 110 | 240 55 Petition to revive - unavoidable | |
| 141 | 1,280 | 241 640 Petition to revive - unintentional | 1,280 |
| 142 | 1,280 | 242 640 Utility issue fee (or reissue) | |
| 143 | 460 | 243 230 Design issue fee | |
| 144 | 820 | 244 310 Plant issue fee | |
| 122 | 130 | 122 130 Petitions to the Commissioner | |
| 123 | 50 | 123 50 Processing fee under 37 CFR 1.17(q) | |
| 126 | 180 | 126 160 Submission of Information Disclosure Stmt | |
| 581 | 40 | 581 40 Recording each patent assignment per property (times number of properties) | 40 |
| 146 | 740 | 246 370 Filing a submission after final rejection (37 CFR § 1.129(a)) | |
| 149 | 740 | 249 370 For each additional invention to be examined (37 CFR § 1.129(b)) | |
| 179 | 740 | 279 370 Request for Continued Examination (RCE) | |
| 169 | 900 | 169 900 Request for expedited examination of a design application | |
| Other fee (specify) | | | 1,060 |
| U.S. Basic National Fee - 30 Month | | | |
| *Reduced by Basic Filing Fee Paid | | | |
| SUBTOTAL (3) | | | (\$2,510) |

SUBMITTED BY

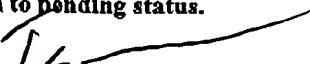
Complete if applicable

| | | | | | |
|-------------------|---|-----------------------------------|--------|-----------|-------------------|
| Name (Print/Type) | Timothy E. Newholm | Registration No. (Attorney/Agent) | 34,400 | Telephone | (414) 225-9755 |
| Signature |  | | | Date | December 11, 2001 |

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

| | | |
|--|--|---|
| U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE FORM PTO-1390 (REV 11-2000) | | ATTORNEY'S DOCKET NUMBER 72.053 |
| TRANSMITTAL LETTER TO THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) CONCERNING A FILING UNDER 35 U.S.C. 371 | | U.S. APPLICATION NO. (If known, see 37 CFR 1.5) |
| INTERNATIONAL APPLICATION NO. PCT/EP00/02138 | INTERNATIONAL FILING DATE 10 March 2000 | PRIORITY DATE CLAIMED March 23, 1999 |
| TITLE OF INVENTION <i>Internal Vibrator with a Measuring System</i> | | |
| APPLICANT(S) FOR DO/EO/US Günter KUNZE, Georg SICK and Stefan GRAUL | | |
| Applicant herewith submits to the United States Designated/Elected Office (DO/EO/US) the following items and other information: | | |
| <p>1. <input type="checkbox"/> This is a FIRST submission of items concerning a filing under 35 U.S.C. 371.</p> <p>2. <input type="checkbox"/> This is a SECOND or SUBSEQUENT submission of items concerning a filing under 35 U.S.C. 371.</p> <p>3. <input type="checkbox"/> This is an express request to begin national examination procedures (35 U.S.C. 371 (f)). The submission must include items (5), (6), (9) and (21) indicated below.</p> <p>4. <input type="checkbox"/> The US has been elected by the expiration of 19 months from the priority date (Article 31).</p> <p>5. <input type="checkbox"/> A copy of the International Application as filed (35 U.S.C. 371 (c)(2)) <ul style="list-style-type: none"> a. <input type="checkbox"/> is attached hereto (required only if not communicated by the International Bureau). b. <input type="checkbox"/> has been communicated by the International Bureau. c. <input type="checkbox"/> is not required, as the application was filed in the United States Receiving Office (RO/US). </p> <p>6. <input type="checkbox"/> An English language translation of the International Application as filed (35 U.S.C. 371 (c)(2)) <ul style="list-style-type: none"> a. <input type="checkbox"/> is attached hereto. b. <input type="checkbox"/> has been previously submitted under 35 U.S.C. 154(d)(4). </p> <p>7. <input type="checkbox"/> Amendments to the claims of the International Application under PCT Article 19 (35 U.S.C. 371(c)(3)) <ul style="list-style-type: none"> a. <input type="checkbox"/> are attached hereto (required only if not communicated by the International Bureau). b. <input type="checkbox"/> have been communicated by the International Bureau. c. <input type="checkbox"/> have not been made; however, the time limit for making such amendments has NOT expired. d. <input type="checkbox"/> have not been made and will not be made. </p> <p>8. <input type="checkbox"/> An English language translation of the amendments to the claims under PCT Article 19 (35 U.S.C. 371(c)(3)).</p> <p>9. <input checked="" type="checkbox"/> An oath or declaration of the inventor(s) (35 U.S.C. 371(c)(4)). - EXECUTED</p> <p>10. <input type="checkbox"/> An English language translation of the annexes to the International Preliminary Examination Report under PCT Article 36 (35 U.S.C. 371(c)(5)).</p> | | |
| Items 11 to 20 below concern document(s) or information included: | | |
| <p>11. <input type="checkbox"/> An Information Disclosure Statement under 37 CFR 1.97 and 1.98.</p> <p>12. <input checked="" type="checkbox"/> An assignment document for recording and Appointment of Domestic Representative. EXECUTED</p> <p>13. <input type="checkbox"/> A FIRST preliminary amendment.</p> <p>14. <input type="checkbox"/> A SECOND or SUBSEQUENT preliminary amendment.</p> <p>15. <input type="checkbox"/> A substitute specification.</p> <p>16. <input type="checkbox"/> A change of power of attorney and/or address letter.</p> <p>17. <input type="checkbox"/> A computer-readable form of the sequence listing in accordance with PCT Rule 13ter.2 and 35 U.S.C. 1.821 – 1.825.</p> <p>18. <input type="checkbox"/> A second copy of the published international application under 35 U.S.C. 154(d)(4).</p> <p>19. <input type="checkbox"/> A second copy of the English language translation of the international application under 35 U.S.C. 154(d)(4).</p> <p>20. <input type="checkbox"/> Other items or information:</p> | | |

| | | |
|---|---|------------------------------------|
| U.S. APPLICATION NO. (if known, see 37 CFR 1.5) | INTERNATIONAL APPLICATION NO. PCT/00/02138 | ATTORNEY'S DOCKET NUMBER 72.053 |
| <p>21. <input type="checkbox"/> The following fees are submitted:</p> <p>BASIC NATIONAL FEE (37 CFR 1.492 (a) (1) - (5)) :</p> <p>Neither international preliminary examination fee (37 CFR 1.482) nor international search fee (37 CFR 1.445(a)(2)) paid to USPTO and International Search Report not prepared by the EPO or JPO \$1040.00</p> <p>International preliminary examination fee (37 CFR 1.482) not paid to USPTO but International Search Report prepared by the EPO or JPO \$890.00</p> <p>International preliminary examination fee (37 CFR 1.482) not paid to USPTO but international search fee (37 CFR 1.445 (a)(2)) paid to USPTO \$740.00</p> <p>International preliminary examination fee (37 CFR 1.482) paid to USPTO but all claims did not satisfy provisions of PCT Article 33(1)-(4) \$710.00</p> <p>International preliminary examination fee (37 CFR 1.482) paid to USPTO and all claims satisfied provisions of PCT Article 33(1)-(4) \$100.00</p> | | CALCULATIONS PTO USE ONLY |
| ENTER APPROPRIATE BASIC FEE AMOUNT = | | \$ 890.00 |
| Surcharge of \$130.00 for furnishing the oath or declaration later than <input type="checkbox"/> 20 <input checked="" type="checkbox"/> 30 months from the earliest claimed priority date (37 CFR 1.492(e)). | | \$ 130.00 |
| CLAIMS NUMBER FILED NUMBER EXTRA RATE \$ | | |
| Total claims 0 - 20 = 0 X \$18.00 | | \$ 0.00 |
| Independent claims 0 - 3 = 0 X \$80.00 | | \$ 0.00 |
| MULTIPLE DEPENDENT CLAIM(S) (if applicable) | | + \$270.00 |
| TOTAL OF ABOVE CALCULATIONS = | | \$ 0.00 |
| <input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27. The fees indicated above are reduced by 1/2. | | + \$ 0.00 |
| SUBTOTAL = | | \$ 0.00 |
| Processing fee of \$130.00 for furnishing the English translation later than <input type="checkbox"/> 20 <input type="checkbox"/> 30 months from the earliest claimed priority date (37 CFR 1.49(f)). | | \$ 0.00 |
| TOTAL NATIONAL FEE = | | \$ 1020.00 |
| Fee for recording the enclosed assignment (37 CFR 1.21(h)). The assignment must be accompanied by an appropriate cover sheet (37 CFR 3.28, 3.31). \$40.00 per property | | + \$ 40.00 |
| TOTAL FEES ENCLOSED = | | \$ 1060.00 |
| | | Amount to be: \$ refunded |
| | | charged \$ |
| <p>a. <input checked="" type="checkbox"/> A check in the amount of \$ 1060.00 to cover the above fees is enclosed.</p> <p>b. <input type="checkbox"/> Please charge my Deposit Account No. _____ in the amount of \$ _____ to cover the above fees. A duplicate copy of this sheet is enclosed.</p> <p>c. <input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-1170. A duplicate copy of this sheet is enclosed.</p> <p>d. <input type="checkbox"/> Fees are to be charged to a credit card. WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.</p> | | |
| <p>NOTE: Where an appropriate time limit under 37 CFR 1.494 or 1.495 has not been met, a petition to revive (37 CFR 1.137(a) or (b)) must be filed and granted to restore the application to pending status.</p> <p>SEND ALL CORRESPONDENCE TO:  Timothy E. Newholm BOYLE, FREDRICKSON, NEWHOLM, STEIN & GRATZ S.C. 250 E. Wisconsin Ave., Ste. 1030 Milwaukee, WI 53202</p> <p style="text-align: right;">_____ Timothy E. Newholm, Reg. No. 34,400</p> | | |

DECLARATION FOR PATENT APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name. I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled **INTERNAL VIBRATOR WITH A MEASURING SYSTEM**, which is described and claimed in

the attached specification.
 the specification in application _____, filed on September 21, 2001
 and amended on _____ (if applicable).
 international (PCT) application No. _____, filed on _____
 and as amended on _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is known to be material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, §1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed.

Prior Foreign Application(s)

| | | | Priority Claimed |
|----------------------------|----------------------|---|---|
| 100 13 077 9 (Number) | Germany (Country) | 23 March 1999 (Day/Month/Year Filed) | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| PCT/EP00/02138 (Number) | PCT (Country) | 10 March 2000 (Day/Month/Year Filed) | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose information which is known to be material to the patentability of this application as defined in Title 37, Code of Federal Regulations, §1.56 which occurred between the filing date of the prior application and the national or PCT International filing date of this application.

| (Application Number) | (Filing Date) | (Status - Patented, Pending, Abandoned) |
|----------------------|---------------|---|
| | | |

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith: James F. Boyle, Reg. No. 33,653; Timothy E. Newholm, Reg. No. 34,400; Peter C. Stomma, Reg. No. 36,020; David D. Stein, Reg. No. 40,828; Michael J. Gratz, Reg. No. 39,693; Mary B. Eberle, Reg. No. 43,599; Peter C. Stomma, Reg. No. 36,020; Andrew S. McConnell, Reg. No. 32,272; and Mathew E. Corr, Reg. No. 45,434.

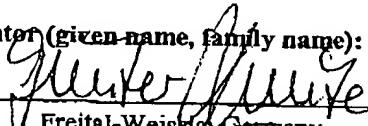
Address all telephone calls to Timothy E. Newholm at telephone number (414) 225-9755, facsimile number (414) 225-9753.

Address all correspondence to: Timothy E. Newholm

BOYLE FREDRICKSON NEWHOLM STEIN & GRATZ S.C.
 250 Plaza, Suite 1030
 250 East Wisconsin Avenue
 Milwaukee, Wisconsin 53202

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first inventor (given name, family name): Günter KLINZE

Inventor's signature: 

Date: Oct. 5, 2001

Residence: Freital-Weissig, Germany

Citizenship: Germany

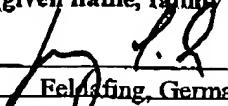
Post Office Address: Steile Strasse 22

D-01705 Freital-Weissig, Germany

Title: Internal Vibrator with a Measuring System

Inventors: Günter KUNZE, Georg SICK and Stefan GRAUL

Full name of second inventor (given name, family name): Georg SICK

Inventor's signature:  Date: Oct. 5, 2001

Residence: Feldafing, Germany Citizenship: Germany

Post Office Address: Zugspitzstrasse 9

D-82340 Feldafing, Germany

Full name of third inventor (given name, family name): Stefan GRAUL

Inventor's signature:  Date: Oct. 5, 2001

Residence: Wörlitz, Germany Citizenship: Germany

Post Office Address: Neue Reihe 180

Wörlitz, Germany D-06786

Form PTO -1619A

Expires 06/30/99

OMB 0651-0027

U.S. Department of Commerce

Patent and Trademark Office

PATENT

RECORDATION FORM COVER SHEET
PATENTS ONLY

72.053

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

 New Resubmission (Non-Recordation)
Document ID# Correction of PTO Error
Reel # Frame # Corrective Document
Reel # Frame #

Conveyance Type

 Assignment Security Agreement License Change of Name Merger OtherU.S. Government
(For Use ONLY by U.S. Government Agencies) Departmental File Secret File

Conveying Party(ies)

 Mark if additional names of conveying parties attached

Name (line 1) Günter

Execution Date
Month Day Year

Name (line 2) Kunze

October 5, 2001

Second Party

Name (line 1) Georg

Execution Date
Month Day Year

Name (line 2) SICK

October 5, 2001

Third Party

Name (line 1) Stefan

Execution Date
Month Day Year

Name (line 2) GRAUL

October 5, 2001

Receiving Party

 Mark if additional names of receiving parties attached

Name (line 1) Wacker-Werke GmbH & Co. KG

 If document to be recorded is
an assignment and the
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States, an appointment of a
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attached. (Designation
must be a separate
document from Assignment.)

Name (line 2)

Address (line 1) Hauptverwaltung Munich

Address (line 2) Preussenstrasse 41

Address (line 3)

Munich
cityGermany
State/CountryD-80935
Zip Code

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1) Boyle Fredrickson Newholm Stein & Gratz S.C.

Address (line 2) 250 East Wisconsin Avenue, Suite 1030

Address (line 3) Milwaukee, WI 53202-4232

Address (line 4)

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Mail documents to be recorded with required cover sheet(s) information to:

ASSIGNMENT

WHEREAS, we, Günter KUNZE, Georg SICK and Stefan GRAUL, have made a certain new and useful invention for which we are about to make application for Letters Patent of the United States, which application may be identified in the United States Patent Office as Serial No. 09/937,331, filed September 21, 2001 and entitled:

Internal Vibrator with a Measuring System

(Executed: 10/5/2001)

WHEREAS, Wacker-Werke GmbH & Co. KG, a corporation organized and existing under and by virtue of the laws of the Country of Germany and having its principal place Munich, Germany, is desirous of acquiring the entire interest in and to said invention, said application and the Letters Patent to be obtained therefore;

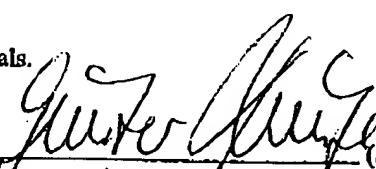
NOW, THEREFORE, for and in consideration of One Dollar and other good and valuable consideration to us in hand paid, the receipt and sufficiency whereof are hereby acknowledged, we have sold, assigned, and set over and by these presents do hereby sell, assign, and set over unto the said Wacker-Werke GmbH & Co. KG, and said assignee's legal representative, successors and assigns, the entire right, title and interest in and to any and all applications including the aforesaid application, for Letters Patent heretofore and hereafter filed in the United States or any other country and which may be based in whole or in part on said inventions and discoveries, and in and to any and all Letters Patent heretofore or hereafter granted by the United States or any other country and which may be based in whole or in part on said inventions and discoveries, said assignment including the right to file and prosecute any and all such applications and also including the right to sue and recover for any and all such applications and also including the right to sue and recover for any and all infringements of said patents; and request the Commissioner of Patents to issue said Letters Patent to the above-mentioned assignee agreeably with the terms of this assignment.

WE HEREBY AUTHORIZE the law firm of Boyle Fredrickson Newholm Stein & Gratz S.C. the power to insert in this instrument any further identification which may be necessary or desirable in order to comply with the rules of the United States Patent Office for recordation of this document.

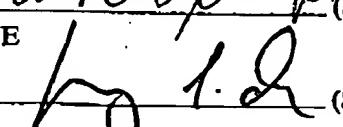
UPON SAID CONSIDERATION, we do hereby covenant for ourselves and our heirs, legal representatives and assigns that neither we nor any of my said heirs, legal representatives or assigns have or will execute any instrument or perform any act in conflict herewith and that we or our said heirs, legal representatives and assigns will at all times do such acts and execute such papers, without expense to ourselves, as may be necessary or desirable in order to fully protect said inventions and discoveries for the benefit of said assignee, its successors or assigns, and to otherwise carry into full force and effect the text and interest of this assignment.

IN WITNESS WHEREOF, we have hereunto set our hands and affixed our seals.

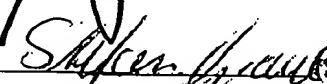
Date: Oct. 5, 2001


Günter KUNZE (SEAL)

Date: Oct. 5, 2001


Georg SICK (SEAL)

Date: Oct. 5, 2001


Stefan GRAUL (SEAL)

BOYLE FREDRICKSON NEWHOLM
STEIN & GRATZ S.C.
250 Plaza, Suite 1030
250 East Wisconsin Avenue
Milwaukee, WI 53202
Telephone: 414.225.9755

IN THE UNITED STATES PATENT AND TRADEMARK

National Phase of PCT/EP00/02138

International Filing Date: 10 March 2000

Inventors: Günter KUNZE, Georg SICK and Stefan GRAUL

Title: *Internal Vibrator with a Measuring System*

Priority: German Application No. 199 13 077.9; Filed 23 March 1999

Director of the U.S. Patent
and Trademark Office
Washington, D.C. 20231

APPOINTMENT OF DOMESTIC REPRESENTATIVE

Applicants appoint BOYLE FREDRICKSON NEWHOLM STEIN & GRATZ S.C., a firm of professional corporations, of 250 East Wisconsin Avenue, Suite 1030, Milwaukee, Wisconsin 53202, United States of America, comprising James F. Boyle, Reg. No. 33,653, Timothy E. Newholm, Reg. No. 34,400, David D. Stein, Reg. No. 40,828, Michael J. Gratz, Reg. No. 39,693, Peter C. Stomma, Reg. No. 36,020, Mary E. Eberle, Reg. No. 43,599, Andrew S. McConnell, Reg. No. 32,272, and Mathew E. Corr, Reg. No. 45,434, all members of the bar of the State of Wisconsin, to prosecute the above-referenced application to register and to transact all business in the Patent and Trademark Office in connection therewith.

WACKER-WERKE GmbH & CO. KG

Date: Munich, 28, 2001

By: Mr. J. Gentz Mr. R. Mayer

Name: Jürgen Gentz Richard Mayer

Title: General Counsel Head of Controlling

OYLE, FREDRICKSON, NEWHOLM, STEIN & GRATZ, S.C.

13386

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**BOYLE, FREDRICKSON, NEWHOLM,
STEIN & GRATZ, S.C.
250 E. WISCONSIN AVE.
SUITE 1030
MILWAUKEE, WI 53202**

M & I MARSHALL & JLSLEY BANK
12-5-750

12-5-750

13386

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| DATE | CHECK | AMOUNT |
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| 12/12/01 | | **\$2,510.00 |

PAY *** TWO THOUSAND FIVE HUNDRED TEN & 00/100 DOLLARS
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013386 025000510 000311111

Serial No.: 09/937,331 Filing Date: September 21, 2001

Inventor(s): Kunze et al.

The following dated December 12, 2001 has been received in the U.S. Patent Office on the DATE STAMPED hereon:

Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)
 Amendment w/attached Marked-Up Version of Amended Claim
 Transmittal Letter to US Designated/Elected Office
 Formal Drawing Transmittal
 Informal/Formal Drawings: sheets
 Declaration for Patent Application
 Assignment of Invention w/Recordation Coversheet and Appointment of Domestic Representative
 Fee Transmittal
 Check in the amount of \$2,510.00
 Information Disclosure Statement w/ PTO-1449, cited reference
 Priority Document No. , filed
 Other: _____

APPENDIX B

A self-addressed stamped postcard receipt, accompanying said Petition, was received by the PCT Branch of the USPTO on February 4, 2002

Serial No.: 09/937,331 Filing Date: September 21, 2001

Inventor(s): Kunze et al.

The following dated December 12, 2001 has been received in the U.S. Patent Office on the DATE STAMPED hereon:

Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)

Amendment w/attached Marked-Up Version of Amended Claim

Transmittal Letter to US Designated/Elected Office

Formal Drawing Transmittal

Informal/Formal Drawings: 1 sheets

Declaration for Patent Application

Assignment of Invention w/Recordation/Coversheet and Appointment of Domestic

Representative

Fee Transmittal

Check in the amount of \$2,510.00

Information Disclosure Statement w/ PTO-1449, cited reference

Priority Document No. , filed

Other:

Attorney Ref No. 72.053

10/049135

JC10 Rec'd PCT/PTO 04 FEB 2002

100000426.DOC /1

APPENDIX C

Notice of Cancellation of Assigned Serial Number, dated April 5, 2002

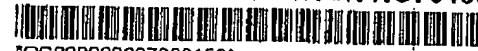


UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents, Box F-1
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

| | | |
|--|-----------------------|-------------------------------|
| U.S. APPLICATION NUMBER NO. | FIRST NAMED APPLICANT | ATTY. DOCKET NO. |
| 09/937,331 | Gunter Kunze | 72.053 |
| 23598 BOYLE FREDRICKSON NEWHOLM STEIN & GRATZ, S.C. 250 E. WISCONSIN AVENUE SUITE 1030 MILWAUKEE, WI 53202 | | INTERNATIONAL APPLICATION NO. |
| | | PCT/EP00/02138 |
| I.A. FILING DATE | | PRIORITY DATE |
| 03/10/2000 | | 03/23/1999 |

CONFIRMATION NO. 9486



OC000000007808153

Date Mailed: 04/05/2002

NOTICE OF CANCELLATION OF ASSIGNED SERIAL NUMBER

Documents filed under 35 U.S.C. 371 to enter the national stage before the US Designated/Elected Office were received by the US Patent and Trademark Office on 9/21/01 and assigned serial number 9/937,331.

Documents filed later under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 were received on 2/4/02 and assigned serial number 10/049,135.

The assigned serial number 10/049,135 has been cancelled and other assigned serial number should be used when filing papers in the Patent and Trademark Office.

Note: *Any fees associated with 10/049,135 have been credited to Deposit acct # 50-170.*

Applicant will be receiving further communications concerning 35 U.S.C. 371 in due course.

Applicant is reminded that any communication mailed to the United States Patent and Trademark Office must be directed to the address and include the U.S. application no. in the heading above (37 CFR 1.5).

John Doreen Greene
WINSTON M ALVARADO

Telephone: (703) 305-6421

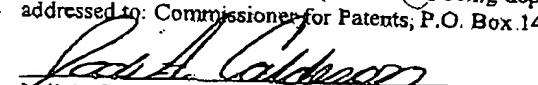
PART 1 - ATTORNEY/APPLICANT COPY

FORM PCT/DO/EO/908 (Canceled Application Number)

APPENDIX D

First, second, and third status inquiry letters dated May 21, 2003, September 15, 2003, and March 8, 2004, respectively

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.


Jodi A. Calderon

Date:

5-21-03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/937,331 Examiner: (not yet assigned)
Filing Date: September 21, 2001 Group Art Unit: 1723
Inventor: Kunze Attorney Docket No. 72.053
Assignee: Wacker Construction Equipment AG
Invention: *Internal Vibrator with a Measuring System*

STATUS INQUIRY LETTER

Mail Stop PCT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant respectfully requests an update on the status of the above-referenced patent application since more than *twenty (20) months* have passed since the filing the patent application in which no Office Action has been issued to date.

Respectfully submitted,


Timothy E. Newholm
Registration No. 34,400

Dated: May 21, 2003
BOYLE FREDRICKSON NEWHOLM
STEIN & GRATZ S.C.
250 East Wisconsin Avenue
Milwaukee, WI 53202
Telephone: (414) 225-9755
Facsimile: (414) 225-9753
(00039392.DOC /)

Serial No.: 09/937,331 Filing Date: September 21, 2001

Inventor(s): Kunze

The following dated May 21, 2003 has been received in the U.S. Patent Office on the
DATE STAMPED hereon:

Status Inquiry w/Certificate of Mailing dated May 21, 2003 (1-page)

Also enclosed:

NOT APPLICABLE

Other: Return postcard

Attorney Docket No.: 72.053

USPTO REC'D/PTO 27 MAY 2003

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Jodi A. Calderon
Jodi A. Calderon

Date:

9-15-03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/937,331 Examiner: (not yet assigned)
Filing Date: September 21, 2001 Group Art Unit: 1723
Inventor: Kunze Attorney Docket No. 72.053
Assignee: Wacker Construction Equipment AG
Invention: *Internal Vibrator with a Measuring System*

STATUS INQUIRY LETTER

Mail Stop PCT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant respectfully requests an update on the status of the above-referenced patent application since more than *eighteen (18) months* has passed since a Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b) was filed on February 4, 2002 in which no Decision on Petition has been issued to date.

Respectfully submitted,

T. E. Newholm
Timothy E. Newholm
Registration No. 34,400

Dated: September 15, 2003
BOYLE FREDRICKSON NEWHOLM
STEIN & GRATZ S.C.
250 East Wisconsin Avenue
Milwaukee, WI 53202
Telephone: (414) 225-9755
Facsimile: (414) 225-9753
{00045955.DOC /}

Serial No.: 09/937,331 Filing Date: September 21, 2001

Inventor(s): Kunze

The following dated September 15, 2003 has been received in the U.S. Patent Office on the DATE STAMPED heron:

Status Inquiry w/Certificate of Mailing dated September 15, 2003 (1-page)

Also enclosed:

- Return postcard

Attorney Docket No.: 72.053

Attorney Initials: TEN

U 120 Rec'd PCT/PTO 17 SEP 2003

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Jodi A. Calderon

Date:

3-8-04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/937,331 Examiner: (not yet assigned)
Filing Date: September 21, 2001 Group Art Unit: 1723
Inventor: Kunze Attorney Docket No. 72,053
Assignee: Wacker Construction Equipment AG
Invention: *Internal Vibrator with a Measuring System*

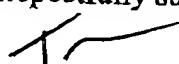
THIRD STATUS INQUIRY LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Further to our Status Inquiries of May 21, 2003 and September 17, 2003, to which no response has been received, applicant respectfully requests an update on the status of the above-referenced patent application since nearly *twenty (24) months* has passed since a Notice of Cancellation of Assigned Serial Number was issued by the USPTO on April 5, 2002.

Respectfully submitted,


Timothy E. Newholm
Registration No. 34,400

Dated: March 8, 2004
BOYLE FREDRICKSON NEWHOLM
STEIN & GRATZ S.C.
250 East Wisconsin Avenue
Milwaukee, WI 53202
Telephone: (414) 225-9755
Facsimile: (414) 225-9753

Serial No.: 09/937,331 Filing Date: September 21, 2001
Inventor(s): Kunze

The following dated March 8, 2004 has been received in the U.S. Patent Office on the
DATE STAMPED hereon:

Status Inquiry w/Certificate of Mailing dated March 8, 2004 (1-page)

Also enclosed:

- Return postcard

Attorney Docket No.: 72.053

Attorney Initials: TEN



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